97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-380

DEFENSE INTELLIGENCE AGENCY PERSONNEL MANAGEMENT IMPROVEMENT ACT OF 1981

MAY 5 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. WALLOP (for Mr. GOLDWATER) from the Select Committee on Intelligence, submitted the following

REPORT

[To accompany S. 2488]

The Select Committee on Intelligence, having considered the original bill (S. 2488) to strengthen and improve the management of civilian personnel within the Defense Intelligence Agency, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to improve the management of civilian personnel within the Defense Intelligence Agency by amending chapter 38 of title 10, United States Code, to exempt DIA from civil service classification provisions, authorize compensation for DIA civilian personnel, exempt DIA from certain disclosure requirements, and authorize the Secretary of Defense to terminate the employment of DIA civilian personnel when necessary or advisable in the interests of the United States.

GENERAL STATEMENT

During its hearings on the Intelligence Authorization Act for fiscal year 1982, the Select Committee considered the personnel management systems of three major components of the United States Intelligence Community—CIA, the National Security Agency, and the Defense Intelligence Agency—and their impact on the quality of intelligence analysis. It was evident from this review that the Defense Intelligence Agency does not have the same flexibility currently available to the CIA and NSA under applicable statutes. As a consequence, DIA has been significantly handicapped in its ability to recruit and reward outstanding analysts and other intelligence specialists and otherwise to operate an equally effective civilian personnel system. If the benefits of "competitive analysis," a concept which both the Administration

89-010 O

S423-2

and the Select Committee strongly support, are to be realized, it is imperative that DIA have analytical capabilities comparable to its sister agencies.

To respond to this problem, the Select Committee included in S. 1127, the Intelligence Authorization Act for fiscal year 1982 as reported by the Committee on May 6, 1981, specific provisions for the improvement of DIA personnel management. These provisions were subsequently approved by the Governmental Affairs and Armed Services Committees and were included in S. 1127 as passed by the Senate. However, the comparable House bill, H.R. 3454, contained no such provisions. The Conference Report on the Intelligence Authorization Act for fiscal year 1982 adopted some of the DIA personnel management provisions of the Senate bill, but omitted several important aspects. The Joint Explanatory Statement of the Committee of Conference stated:

> The conferees agreed not to include the other portions of the Senate amendment but agreed that these proposals deserve the scrutiny of regular hearings and consultation among all committees of appropriate jurisdiction.

This bill carries forward the recommendation of the Conference Committee and contains the DIA personnel management provisions from S. 1127 that were not included in the Intelligence Authorization Act for fiscal year 1982 as enacted. The bill exempts DIA from classification provisions of civil service laws, establishes rates of compensation for DIA employees, exempts DIA from certain government-wide disclosure laws, and gives authority to the Secretary of Defense to terminate the employment of any DIA civilian employee if he deems it advisable in the interests of the United States.

The U.S. intelligence system is unique and complex and by its nature dictates unusual personnel management processes in order to attain maximum effectiveness. The analysis of foreign intelligence requires a wide variety and combination of academic disciplines and skills. DIA must be able to compete effectively in the job market for these skills and offer rewarding career prospects to retain personnel. Intelligence personnel management systems also need to be flexible to adjust to changing intelligence interests as driven by a dynamic world environment. Further, the protection of highly classified information is of paramount importance. The ability to meet security requirements and minimize the risk of compromise of dedicated intelligence personnel must be an important feature of the personnel management system. These factors have long been recognized in the personnel systems established for both CIA and NSA which, along with DIA, make up a triumvirate of national level intelligence agencies that compete for similar personnel and must have similar personnel management system flexibilities. By maintaining personnel program balance among these agencies pursuing their respective missions, the intelligence community can best satisfy U.S. intelligence consumer needs.

CIA conducts its personnel program under its enabling statutory authority, which allows CIA to develop and operate a personnel management system tailored to its needs. CIA operates without overview by the Office of Personnel Management, and CIA has its own proce-

dures for determining qualifications and pay. CIA management can exercise greater prerogatives for termination of employees. The National Security Agency also has a flexible system which by statute operates differently from other Defense Department elements that function under Office of Personnel Management policies. Like CIA, NSA has its own procedures for determining qualifications and pay and has special termination authority peculiar to its needs.

The Defense Intelligence Agency should be able to operate its personnel management system on an equal footing with its two sister intelligence agencies. Today, DIA operates under policies and procedures prescribed by the Office of Personnel Management. Fundamentally, these policies and procedures involve three basic concepts. They are (1) competitive, (2) excepted, and (3) political appointed for certain executive level and supporting positions. The competitive system is restrictive in its application and applies to most federal positions. The excepted system, commonly referred to as Schedule A or excepted service, is somewhat less restrictive but still administered under common guidelines and procedures issued by OPM. DIA operates under the excepted service authorities delegated by OPM. Excepted authority grants DIA some flexibility with respect to hiring and removal of employees. However, the excepted service authority does not permit the internal prerogatives under which CIA and NSA operate.

DIA must function under the general personnel administrative procedures, principally with respect to job classification, applicable to most of the rest of the government service. DIA removal authority under the excepted service, while somewhat less cumbersome than the competitive system, still provides for external appeal in cases involving preference eligibles. The public nature of the DIA personnel system also imposes constraints which adversely affect its operations. The true nature and importance of key civilian assignments must be given such high levels of security classification that is often difficult to present requirements to reviewing officials who do not possess required access authority. Accordingly, to present and justify grade level and position descriptions in an unclassified manner may result in a failure to adequately understand the true nature and scope of the assignment. The public disclosure of personnel information can also expose employees to increased risk of compromise. Therefore, as with CIA and NSA, the Defense Intelligency Agency should be exempted from statutory requirements involving disclosure of organizational, functional, and personnel matters which require protection in the interest of national security.

The Select Committee believes that this bill would enhance DIA's capabilities to attract and retain high quality personnel in competition with other intelligence agencies. Flexibility to establish additional civilian executive positions would permit the Agency to develop and retain adequate in-house expertise on the broad geographical and topical intelligence interests needed to meet growing intelligence requirements. Classification authority would be granted to permit establishment of compensation based on individual capabilities and to ensure timely assignment and utilization of high quality personnel to meet changing emphasis in intelligence interests. By exempting DIA

from certain government disclosure requirements the personnel system could function more effectively and ensure essential protection of national security information. Finally, DIA would achieve maximum utilization of authorized manpower through enhanced and simplified authority for termination of employees determined to be unacceptable. In combination with the provisions already enacted in the Intelligence Authorization Act for fiscal year 1982, this bill would correct the statutory imbalance among personnel systems in the intelligence community.

As stated in the Select Committee's report on S. 1127 (S. Rept. No. 95–57, p. 20), DIA indicates that the additional costs resulting from this bill are estimated to be relatively small and will be absorbed within authorized appropriation levels. It is anticipated that such costs will be offset by efficiencies to be realized by relief from current cumbersome procedures.

Sectional Analysis

The bill amends chapter 83 of title 10, United States Code, by adding a new section 1604 on "Civilian Personnel Management." Chapter 83 of title 10 is entitled "Defense Intelligence Agency Civilian Personnel" and contains the provisions on the Defense Intelligence Senior Executive Service and DIA merit pay system enacted as Title VII of the Intelligence Authorization Act for fiscal year 1982.

Subsections (a) through (d) of the new section 1604 would authorize the Secretary of Defense to establish a flexible personnel management system for those personnel not in the Defense Intelligence Senior Executive Service. Salaries and pay would be fixed in relation to the General Schedule and Wage Grade (prevailing rate) system. A flexible classification system would be established which would incorporate the concepts of both position classification and rank in the person. The system would be structured to permit assignment, movement, and career development without cumbersome classification and related administrative procedures. These flexibilities would permit DIA to rapidly deploy and focus its best talent to vital intelligence areas.

Subsection (a) authorizes the Secretary of Defense to establish civilian positions in the Defense Intelligence Agency and to appoint individuals to such positions, without regard to civil service requirements. Subsection (b) authorizes the Secretary of Defense to fix pay for positions established under subsection (a) in relation to the General Schedule (GS) rates. Subsection (c) authorizes a prevailing rate system of basic compensation for positions in or under which the Agency may employ individuals in a trade, craft, or manual labor occupation. Subsection (d) authorizes additional compensation for employees stationed outside the continental United States or in Alaska at rates not to exceed those authorized by 5 U.S.C. 5941(a).

Subsection (e) permits DIA to withhold disclosure of information on its organization, function, and personnel appointed except for information required by Congress to accomplish normal functions. Under this provision the Secretary of Defense, or his designee, would establish systems similar to the CIA and NSA to preclude disclosure of organizations, functional, and personnel data and information through general administrative reporting systems. At the same time,

this provision ensures that necessary information will continue to be made available for effective Congressional oversight under section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413). This authority is intended to reduce the potential for compromise of sensitive information and to permit DIA to include security compartmented data and information in a variety of personnel and organizational records and documents for more accurate description and evaluation.

Subsection (f) authorizes the Secretary of Defense to terminate employment of any civilian officer or employee of DIA whenever he deems such termination necessary or advisable in the interests of the United States. Termination authority may be delegated only to the Deputy Secretary of Defense and the Director, Defense Intelligence Agency. Termination action would be appealable to the Secretary of Defense. This provision is intended to permit timely and responsive removal of unsatisfactory or unacceptable personnel while preserving basic due process. The intelligence environment requires unusually high standards of conduct and performance to ensure the accuracy and reliability of intelligence products. Tolerance of marginal performance is necesarily low. The flexibilities granted by this provision would relieve DIA from the external public review procedures to which preference eligible members would otherwise be entitled upon appeal to the Merit Systems Protection Board. The DIA system, however, would provide strict safeguards to assure internal appeal to the Secretary of Defense thereby ensuring equity and consistency.

Cost of Legislation

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the Committee estimates that there will be little or no cost as a result of the passage of this bill.

Evaluation of Regulatory Impact

In accordance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will be incurred in implementing the provisions of this legislation.

Changes in Existing Law Made by the Bill

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 10—ARMED FORCES

* * * * * * *

Subtitle A—General Military Law

* * * * * * *

PART II—PERSONNEL

* * * * * * *

CHAPTER 83—DEFENSE INTELLIGENCE AGENCY CIVILIAN PERSONNEL

Sec.

1601. Defense Intelligence Senior Executive Service.
1602. Defense Intelligence Agency merit pay system.
1603. Limit on pay.
1604. Civilian personnel management.

* * * * * * *

§ *1604. Civilian personnel management*

(a) The Secretary of Defense may, without regard to the provisions of title 5 relating to the establishment of (and appointment to) positions in the civil service—

(1) establish such positions for civilian officers and employees in the Defense Intelligence Agency as may be necessary to carry out the functions of such Agency, and

(2) appoint individuals to such positions.

(b) The Secretary of Defense shall fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay contained in the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. Except for positions in the Senior Defense Intelligence Executive Service, no officer or employee of the Defense Intelligence Agency may be paid basic compensation at a rate in excess of the highest rate of basic pay contained in such General Schedule.

(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions in or under which the Defense Intelligence Agency may employ individuals described by section 5342(a)(A) of such title.

(d) In addition to the basic compensation payable under subsection (b), officers and employees of the Defense Intelligence Agency who are citizens or nationals of the United States may be granted compensation, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

(e) Nothing in this section or any other law may be construed to require the disclosure of the organization or any function of the Defense Intelligence Agency or of the names, titles, salaries, or number of persons employed by such Agency, except for information required by the Congress in its considertation of legislation to authorize appropriations or appropriate funds for the Defense Intelligence Agency and except for information required to be disclosed pursuant to section 501 of the National Security Act of 1947.

(f)(1) Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any civilian officer or employee of the Defense Intelligence Agency whenever he deems such termination necessary or advisable in the interests of the United States.

(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept

employment with any other department or agency of the United States if he is declared eligible for such employment by the Office of Personnel Management.

(3) The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense and the Director of the Defense Intelligence Agency. An action to terminate any civilian officer or employee by either such officer shall be appealable to the Secretary of Defense.

○